

# Court case backlog consultancy

## **REPORT**

**USAID/MADAGASCAR**  
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Consultant  
Sophie Romana-Genevrier

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## **ANNEXES**

# INTRODUCTION

## A. Mandate

In 1997 and 1998, and during 1999's first semester, when visiting over half of Madagascar's jurisdictions, USAID/Madagascar and the MINJUS have identified the lack of basic office equipment as one of the factors creating court case backlogs. Basic office equipment (typewriters, calculators, cupboards, metal planning boards and copy machines) were thus granted to jurisdictions outside Antananarivo-city in June and October 1999. Two newly created jurisdictions did not receive equipment (Arivonimamo and Ankazobe), as well as the Court of Appeals of Antananarivo : all of which have been equipped by the MINJUS. As the jurisdiction of Nosy Be it is still only a court section it was not granted equipment either.

The objective of this evaluation is to inform USAID/Madagascar and its partners on the adequacy of the "court case backlog indicator" as a suitable indicator in measuring the increased efficiency in the administration of justice pursuant to the equipment donations and to assess the quality and reliability of the data used to measure the indicator. (see statement of work in annex 1).

A parallel objective is to assess the suitability of the indicator in terms of measuring the impact of equipment granted on the number of rendered and typed judgements.

## B Contribution of the data collected on the field

The collected data may not be used to calculate the indicator, since they are not representative. However, they will be analyzed to yield the causes of reduction and creation of backlogs.

## C. Scope of the report

7 jurisdictions have been visited.

TPI Moramanga	01/04/2000	- TPI Antsiranana	01/27/2000
TPI Ambositra	01/06/2000	- TPI Antalaha	01/24/2000
TPI Fianarantsoa	01/07/2000	- TPI Toamasina	01/21/2000
TPI Mahajanga	01/19/2000		

In each jurisdiction the following people were interviewed. The list of people met during the consultation is listed in annex 2. (TPI refers to 1<sup>st</sup> level courts)

- President of TPI and Vice-Presidents (presiding judges)
- Chief court clerk
- Clerks
- *Prosecutors (not in every court)*

## D. Evaluation organization :

- Checking the equipment donations and verifying whether an inventory exists
- Checking data available for 1997 and 1998 (on the basis of the document "Les décisions Judiciaires non dactylographiées en date du 31 décembre 1997 et 1998 – "Untyped judicial decisions on December 31 1997 & 1997" - annex 3 of the report)
- Collecting data for 1999
- Proceeding to interviews (List of questions - annex 4)

#### E. Visited jurisdictions

A map of Madagascar's jurisdictions may be found in annex 5.

Six jurisdictions were selected on the basis of the table given by USAID/Madagascar : « Les décisions judiciaires non dactylographiées en date du 31 décembre 1997 et 1998 » - annex 3 This selection was approved by the Director of Studies of the MINJUS, during a meeting held December 23, 1999.

Toamasina, given its commercial importance, was added to the scope during a mid-term meeting with USAID/Madagascar's LRJ team held on January 10, 2000.

#### Explanation of the jurisdiction selection

The selection was based on the following criteria :

- Data available in annex 3
- Accessibility whether by road or plane, given a time constraint
- Economic activity of the region

- **FIANARANTSOA** – Capital city of the Province of Fianarantsoa  
Data for this jurisdiction were only available for 1998. The region of Fianarantsoa is essentially agricultural.
- **AMBOSITRA** - Fianarantsoa Province  
As Fianarantsoa, this city is also located in an agricultural zone. Data available for this jurisdiction showed an increasing numbers of untyped judgements in 1998.
- **MORAMANGA** – Toamasina Province  
It is quite recent a jurisdiction since it was created in 1997. Data available showed a reduction of untyped criminal judgements (from 664 to 513) as well as civil judgements (from 39 to 14).
- **MAHAJANGA** – Capital city of the Province of Mahajanga  
The city's main activity is the harbor, as well as commercial activity. Data available showed an important increase for untyped criminal cases (from 1110 to 6165), and a reduction in civil cases from 56 to 23. Mahajanga also showed the highest rate of untyped labor law cases in 1998, amounting to 90.
- **ANTSIRANANA** - Capital city of the Province of Antsiranana  
There are a harbor and naval construction industry in Antsiranana. Data available for this jurisdiction showed an increase of untyped criminal cases : from 2 390 to 3 157; data regarding civil and commercial cases also showed an increase : for civil from 175 to 367 and commercial 27 to 47.
- **ANTALAHA** – Antsiranana Province  
Antalaha is the country's vanilla capital, the region is the first producer of Madagascar. Data available for this jurisdiction was extremely contested. First, a huge decrease in the number of untyped criminal cases showed; additional information from the direction of Studies/MINJUS modified this reduction. Finally, checking on site confirmed the 12 002 stock of untyped criminal judgements for 1998. The table in annex 3 gave the following numbers concerning criminal cases :  
1997 : 11 808 untyped criminal cases  
1998 : 146 Id  
Checking on site gave the following numbers :

1998 :12 002                      1999 : 12 129

- TOAMASINA - Capital city of the Province of Toamasina  
Being the first commercial harbor of the country, Toamasina also is the second most important city business wise. Data for this jurisdiction were only available for 1998.

### ***Preliminary remarks - terminology***

- the term "criminal" covers all four categories of criminal judgements :
  - simple police            minor offenses
  - correctionnel            misdemeanors and felony
  - Cour Criminelle Ordinaire (Ordinary Criminal Court for criminal cases)
  - Cour Criminelle Spéciale (Special Criminal Court for cattle thefts)
- - the words "judgements" and "judicial decisions" are interchangeable since they are only used to describe a document, not a judiciary decision or case.

## I. EQUIPMENT DONATIONS

### 1.1. Checking equipment donated

The director of Studies/MINJUS provided a list of the equipment granted to the Malagasy courts in 1999 within the Legal and Judicial Reform Activity. This list was supplemented by the "List of Equipment to acquired, delivered and installed by Jurisdictions" provided by USAID/Madagascar - LRJ team on 01/14/2000. Both lists were turned into one table constituting annex 6.

### EQUIPMENT DONATIONS MADE TO THE MALAGASY JURISDICTIONS AND VERIFICATION PROCESS

Jurisdiction	Typewriter MC	Typewriter WC	Cupboard Small	Cupboard Large	Metal planning board	Calculator	Copy machines	Verification process
TPI Ambositra	4	1	2	2	1	1		display
TPI Fianarantsoa	6	1	3	3	1	1	1	display
TPI Moramanga	4	1	2	2	1	1		display
TPI Mahajanga	12	2	5	6	1	1	1	display + DS
TPI Toamasina	11	2	4	4	1	1	1	display + inventory
TPI Antalaha	6	1	3	4	1	1		display + DS
TPI Antsiranana	12	2	6	6	I*	1	1	display

display = checking equipment in offices

DS = delivery slips

\*= not delivered yet

#### *1.1.a Inventories*

Toamasina is the only jurisdiction using actually using an inventory : all equipment entries are logged in a copy book. The starting date of this inventory is the first delivery of equipment granted by USAID/Madagascar.

#### *1.1.b Delivery slips*

When no inventory is used, the delivery slips kept in the accounting office were checked.

### 1.2. Use of the equipment donated

#### *1.2.a Typewriters*

Typewriters are dispatched among clerks and secretaries. From now on, each clerk has his own typewriter.

However, in Mahajanga and Antalaha, 5 typewriters have been put aside. According to the Presidents of both jurisdictions, they have done so in the expectation of new hires.

#### *1.2.b. Calculators*

They are located either in the President's office or the accounting clerk's office or in the accounting office.

### *1.2.c Cupboards*

Dispatched among the clerks' and the secretaries' offices, they are used for filing purposes. However, there exist no filing system (whether chronological, vertical, or by reference number). Untyped judgements are filed in piles : each pile representing a hearing.

Absence of a filing system does not make counting untyped judgements easy.

### *1.2.d. Metal planning boards*

Set in the Presidents' offices, it is not clear yet what purpose they will serve. According to Presidents they would be used either to track cases among chambers (dispatched cases among judges and clerks), or to monitor personnel. Those boards were originally planned to be used in the instruction chambers to track pending cases.

### *1.2.e. Copy machines*

They may be found in Presidents' offices to in order to control utilization given the high cost of supplies.



## 2. THE INDICATOR

The indicator concerned by the study is that of the "cumulative percentage reduction in number of untyped judgements".

### 2.1. Definition of an untyped judgement

It is a judgement that has been rendered during a hearing, on the basis of a factum (manuscript of the judgement), but that has not yet been typed up. In Madagascar all the judges must write a factum before rendering a judgement.

To the contrary, a typed judgement may be registered in the clerk's minutes, after having been signed or not by the judge, it may be then notified to the parties and executed. (NOTE : Registering the judgement in the clerk's minutes is the first step of the registering procedure which is extremely complex and has very few common points with either the French or the Anglo-Saxon procedures).

### 2.2. How is the indicator being calculated ?

A reference year is chosen, giving the total number of untyped judgement backlog. Every following year, the backlog for that year is deducted from the reference year's backlog. The difference is then calculated into a percentage.

Reference year = Y  
 Further years = Y+1 = Y1                      Y+2=Y2, etc...  
 Backlog for reference year = B  
 Backlog for further years = B1, B2, etc..  
 Subtraction result B - B1 = S  
 Indicator is the percentage of S/B     $I = (S/B)\%$

### 2.3. Calculation table used by the consultation

In order to make additional data available, the consultation drafted the table below, in collaboration with the direction of Studies/MINJUS and USAID/Madagascar LRJ team.

#### CALCULATION OF THE CUMULATIVE PERCENTAGE REDUCTION IN THE NUMBER OF UNTYPED JUDGEMENTS - HYPOTHESIS

	I	II	III	IV	V	VI	VII
	Nb of untyped decisions at the beginning of the year	Nb of decisions rendered during the year	Total nb of decisions to be typed (I+II)	Nb of typed decisions	Balance of untyped decisions (III-IV)	Gross balance from Year y (VI-V)	Reduction % from Year y (VII/V)%
Year y	1000	300	1300	150	1150	na	na
Year y+1	1150	325	1475	375	1100	50	4,35%
Year y+2	1200	350	1550	425	1125	25	2,17%
Year y+3	1125	400	1525	100	1425	-275	-23,91%
Year y+4	1075	400	1475	550	925	225	19,57%

#### COMMENTS :

- Year "y" is the reference year in the "(VI/Vy)%" formula; Vy is constant since it represents the backlog for the reference year "y".
- A **positive percentage** indicates a **reduction** in the number of untyped judgements.
- A **negative percentage** indicates an **increase** in the number of untyped judgements.

Although the name of the indicator is "cumulative percentage reduction", an increase in the number of untyped judgements may not be excluded. As a consequence, a negative percentage may occur.

#### 2.4 Calculation date of the indicator

USAID/Madagascar must report on the indicator every year, in the "Results Review and Resources Request" report ("R4") drafted during the first semester of the year.

Necessary data should be collected and available by the end of January, as well as the indicator calculation.

In November 1998, an official memo ("circulaire") signed by the ministry of Justice was sent out by the direction of Studies/MINJUS to all the jurisdictions requesting them to send the data regarding untyped judgements. **A copy of this memo may be found in annex 7.**

January 24, 2000 a similar memo was sent out to all the jurisdictions with the table below. A copy of the memo may be found in annex 7.

#### **1999 DATA COLLECTION TABLE**

JURIDICTION : TPI DE			Ministère de la Justice		
Période : 01/01/99 - 31/12/99			Direction des Etudes		
<b>Les décisions et jugements rendus et dactylographiés sur la période 01/01/99 - 31/12/99</b>					
	<b>I</b>	<b>II</b>	<b>III</b>	<b>IV</b>	<b>V</b>
	Nb de décisions	Nb de décisions	Nb total	Nb de décisions	Solde de décisions
	non couchées	rendues pendant	de décisions	couchées	non couchées
	au 01/01/99	la période	à coucher		au 31/12/99
			(I + II)		(III - IV)
CIVIL					
COMMERCIAL					
SOCIAL					
IMMATRICUATION					
C.C.S					
C.C.O					
CORRECTIONNEL					
SIMPLE POLICE					
REFERES					
<b>TOTAL</b>					

### Legend

Civil : civil cases

Commercial : commercial cases

Social : labor law cases

Immatriculation : land registration cases

CCS : Special Criminal Court (cattle thefts)

CCO : Ordinary Criminal Court (crimes)

Correctionnel : felony & misdemeanors

Simple Police : minor offenses

Référés : emergency procedure (used in non criminal cases)

Column 1 : number of untyped judgements as of 01/01/99

Column 2 : number of decisions rendered during the period (01/01/99 - 12/31/99)

Column 3 : total number of decisions to be typed

Column 4 : number of typed decisions

Column 5 : balance of untyped decisions as of 12/31/99

### 2.5. Indicator familiarity

After explaining the purpose of the indicator and its calculation, all interviewed people believe the indicator is an efficient tool to measure clerks' performance. Such an indicator would also allow regular monitoring of the clerks' activity.

### 2.6. Relevance of the indicator

The proposed indicator is relevant to measure the number of untyped judgements for a given time period, and in comparison with the untyped judgements backlog. It is measuring an evolution from a global backlog given for the reference year.

However, the indicator should be enlightened by additional information such as the total number of judgements rendered during the period, which would allow to give a ratio of untyped judgements.

The date of the oldest untyped judgement should be mentioned as well, since the indicator is a "cumulative percentage".

In regards to using the indicator as a measure of the impact of the equipment granted, it should be efficient especially to measure the impact of typewriters. As above mentioned, each clerk now has his own typewriter, which should increase their results.

Indeed, the indicator measures the reduction of untyped judgements, to the contrary, the number of typed judgements. The only figures directly used to calculate the indicator are those of the number of untyped judgements.

Even though other factors may have an impact on the number of typed judgements, such as the staff (number, training, absence, volunteers, etc..) and the work organization (use of pre-printed judgements forms, for instance), these factors are not accounted for in the indicator (no pertaining information is either requested or used to calculate the indicator). But these factors do give important additional information that should be mentioned in the comments of the "R4".

For instance, an information concerning massive hiring is interesting, as well as a change in working hours. But, their impact could not be measured by the indicator, because these factors are not used to calculate it.

The indicator measures the number of untyped judgements and could be used as one of many clerks' performance indicator, since the indicator is not designed to measure the clerks performance.

#### 2.7. "Cumulative" Vs. "Per year"

A "Per year" calculation is preferred by all the interviewed persons, because it would give the evolution from one year to another.

The indicator selected to figure in the "R4" is cumulative because its purpose is to measure progress from the global backlog given for the reference year.

However, the proposed tables may also be used to calculate a "per year" indicator, should the MINJUS and the jurisdictions wish to do so.

#### 2.8. Do jurisdictions use other indicators to monitor untyped judgements ?

Regarding untyped judgements, no other indicator is used to measure their evolution. In some jurisdictions, weekly spreadsheets are reviewed. However all of them only take case backlog into account, seldom untyped judgements.

### 3. UNTYPED JUDGEMENTS DATA SENT TO THE DIRECTION OF STUDIES AT THE MINJUS BY THE JURISDICTIONS

#### 3.1. Untyped judgements constitution

A judgement is constituted of the body of the judgement and of the execution orders. In 6 of the 7 visited jurisdictions, the execution orders were typed after the appeal delay is expired, although there is an obligation to type everything together.

This difference is important and has a direct impact on the volume of typing, thus on the clerk's results.

Appeal delays :

- CIVIL :
- COMMERCIAL : 1 month starting upon notification of the judgement to the
- SOCIAL : plaintiff(s) and the defendant(s)
- MISDEMEANORS & FELONY : 10 days from notification; 20 days when the judgement is rendered during an outside of the court hearing (since not all cities of the country have a court, the TPI will proceed to hearings in cities within its district)

The number of pages of a judgement varies : a civil or commercial judgement might be longer than a misdemeanor one where a judgement may be typed on a pre-printed form (single sheet of paper, using both sides), which goes faster.

In civil, commercial and labor law matters, no form may be used since each case is peculiar.

These factors are important results-wise : a clerk using pre-printed forms may type up to 10 to 15 judgements per day. A civil clerk will only type one judgement.

#### 3.2. What kind of reports are sent out ?

There are 3 main kinds of reports concerning untyped judgements sent by the jurisdictions to the direction of Studies/MINJUS.

- Various kinds of tables
- Letters
- Lists

(samples may be found in annex 8)

This variety does not facilitate data compilation.

Further more, the data sent is not always consistent. For instance, some jurisdictions will give a total number of untyped judgements for criminal cases, instead of using the following categories.

Minor offenses (Simple Police (SP))  
Misdemeanors & felony (Correctionnelle)  
Ordinary Criminal Court (Cour Criminelle Ordinaire (CCO))  
Special Criminal Court (Cour Criminelle Spéciale (CCS))

#### 3.3. How are the untyped judgements being counted ?

Untyped judgements are counted by pile (each pile represents a hearing).

Another way of counting exists : a subtraction is operated between the court register (where all the judgements rendered during a hearing are summed up) and the clerks' minutes registry. But, counting this way may amount to some mistakes : for instance, if criminal minor offenses cases were wrongfully logged in the misdemeanors' court register, then the data given would not be correct.

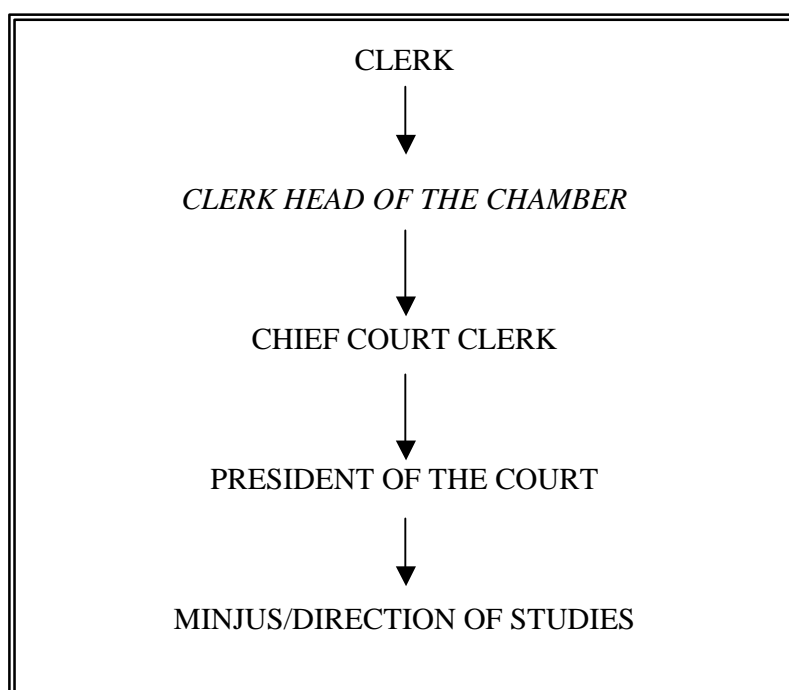
Some clerks use a personal log in which they list all the judgements they have to type (clerks attend hearings and must type the judgements rendered during the hearing's) attended). Once typed up, the judgements are crossed out.

#### 3.4. Who counts untyped judgements ?

Each clerk is responsible for his judgements. When a designated clerk is head of a chamber (for instance civil, commercial, criminal), all the clerks of the office would give him their reports. The reports are then transmitted to the chief court clerk who gives them to the President.

#### 3.5. Who is transmitting the data ?

#### **CHAIN OF DATA TRANSMISSION**



The President of the court is accountable for transmitting the data to the direction of Studies/MINJUS. Most of the time, reports from jurisdictions are signed both by the President and the chief court clerk.

#### **4. QUALITY AND RELIABILITY OF COLLECTED DATA AND INDICATOR VALIDITY**

Four criteria to measure the reliability and quality of the data collected and the indicator were found in the following documents provided by USAID/Madagascar (LRJ): "1998 Report of Audit"; "Performance Monitoring and Evaluation TIPS" 1998 - Number 12 and 1996 - Number 8.

A performance indicator must be direct, objective, practical and adequate. All 4 adjectives being given a particular meaning in regards to USAID's criteria.

##### 4.1 The indicator

###### *4.1.a Is the indicator direct ?*

The cumulative percentage reduction in the number of untyped judgements is direct : it says what it measures and it measures what it says. Indeed, only those figures directly relating to untyped judgements are used to calculate the indicator.

Furthermore, the indicator measures one single phenomenon : the number of untyped judgements evolution.

Yes, according to the Agency's standards, the indicator is direct.

###### *4.1.b Is the indicator objective ?*

This question directly relates to the collected data used to calculate the indicator. Although the untyped judgements are counted, counting is not done the same way everywhere.

What backlog is targeted ?

Let us take the example of Mahajanga :

In 1997, this jurisdiction showed a criminal judgements backlog of 1 110. In 1998, this figures amounted to 6 165. However, the statistics compiled by the direction of Inspection/MINJUS tell that this jurisdiction rendered only 1 211 criminal judgements for that year.

It is possible that the figure of 1 110 for 1997, represented the backlog for this year only, and that 6 165 represented the total backlog accumulated in the previous years.

Checking on site revealed that the 6 165 judgements included all criminal cases (not only "correctionnel" cases).

It appears necessary that all jurisdictions count the number of untyped judgements based on the same information, in order for the indicator to be objective.

*4.1.c Is the indicator practical ?*

*4.1.c.1 Is it cost effective ?*

Presidents are accountable for transmitting data to the direction of Studies/MINJUS. Data are either sent by mail or carried to the MINJUS when possible.

If the procedure were institutionalized, it would avoid a direct collection on the field, realized by representatives of either the MINJUS or USAID/Madagascar. Collection would then be more cost-effective.

In 1999, 26 jurisdictions out of 31 answered to the memo sent by the direction of Studies/MINJUS in November 1998, representing 84%. 17 reports out of the 26 were received by the direction of Studies/MINJUS before 01/31/99, representing 55%. (Table in annex 8).

*4.1.c.2 Is it timely ?*

Data collection needs to be planned ahead of time in order to be timely. Sending a memo ("circulaire") every year at the same time, in November, should be carried on.

It is important that the data collection happen at the same time every year, because it is difficult to get an accurate data after the deadline, since judgements have been typed up in between.

*4.1.d. Is the indicator adequate ?*

The question may be enunciated otherwise : is the indicator sufficient enough to measure the tracked result ? Yes, because it is measuring the number of untyped judgements, and only those.

However, additional information will provide it with a context.

4.2. Collected data

The main issue about existing data collected for 1997 & 1998, is that they are not uniformed as above mentioned in the example of the court of Mahajanga.

This calls for a clarification on the following points in order to get homogeneous data :

- The total backlog must be counted to provide a reference year
- A refined definition of untyped judgements appears to be necessary, especially concerning the inclusion of "factums".
- A classification of judgements should be given to jurisdictions in order for them to provide unified data.



## 5. RECOMMENDATIONS

### Preliminary Remark

Maître Yves RATRIMOARIVONY's law offices is presently conducting a consultancy for the PAIGEP on "the slowness of the judicial procedure". It is suggested that a meeting be held upon termination of this study. Me RATRIMOARIVONY's team should make proposition on statistical tables to be used in the future. Attempts to uniform all statistics request and tables would be welcome.

### 5.1 Recommendations pertaining to the indicator

#### *5.1.a Refining the name of the indicator*

The name of the indicator is "cumulative percentage reduction in the number of untyped judgements", but it is frequently referred to as "court case backlog indicator". This indicator should be considered as one of many backlog indicators : in fact, a court case backlog indicator measures the number of pending cases, not untyped judgements.

#### ***RECOMMENDATION N°1 - Refine the name of the indicator***

To prevent any misunderstanding, it is suggested that the words "untyped judgements" be included :

- "Cumulative percentage reduction in the number of untyped judgements »

OR

- "Untyped judgements backlog indicator"

#### *5.1.b Sampling jurisdictions used to calculate the indicator reported on in the "R4"*

Assuming the jurisdiction will send the data on time to calculate the indicator does not seem realistical although in 1999, 55% of the responses were received before 01/31/99 . (see §4.1.c.1 above).

Directly collecting data on the field may be difficult and take a lot of time (visiting all jurisdictions is not easy given the poor shape of roads and the little number of airplane connections available).

It therefore appears necessary to sample jurisdictions to calculate the indicator. Such a sampling does not cover data collection that should still be done by every jurisdiction.

#### *5.1.c Sampling proposition*

Sampling should be representative of the country, that is take into account the diversity of activities. It should also be representative of the population.

Following criteria may be used for sampling purposes :

- Economic activity : agriculture, business, shipping (harbors), etc...
- Statistical data available, especially the tables produced by the direction of Inspection/MINJUS could be used to sample those jurisdictions with the highest answering rate. Figures would not be taken into account in that case. The assumption is that those jurisdictions may produce a higher response rate than that of 55% already described.

- Accessibility should also be taken into account in order to make controls more cost effective.

***RECOMMENDATION N°2 - Sampling proposition :***

All capital cities of the provinces except Antananarivo (since it was granted no equipment by USAID/Madagascar)

- Fianarantsoa
- Mahajanga
- Toamasina
- Antsiranana
- Toliara
  
- Antsirabe : important commercial and business center located in the province of Antananarivo.

*5.1.d. Including additional information in the comments of the "R4"*

*5.1.d.1. Total number of judgements rendered*

This information is extremely important, because it gives an idea of the proportion of untyped judgements.

When a jurisdiction shows 10 untyped commercial judgements, do those 10 judgements represent 10% or 100% of the judgements rendered ?

Moreover, this type of information would allow the definition of a typing "cruising speed".

A column designed to this effect was included in the collection table showed on page 10 of the report.

***RECOMMENDATION N°3 - Include the total number of judgements rendered in the comments of the "R4"***

*5.1.d.2. Date of the oldest judgement in the backlog*

Since the indicator is "cumulative" it is important to know of when it dates back. This information should be available both for the reference year and the following years.

This information will give a better assessment of the backlog clear out.

For instance, considering criminal cases, the oldest untyped judgement in Mahajanga dates back to 1993.

**RECOMMENDATION - N°4 :** Include the table below in the data collection table in order to get the date of the oldest untyped judgement and mention it in the comments of the "R4".

**"Year of the oldest untyped judgement"**  
 ("Année du jugement non dactylographié le plus ancien")

MATIERES	ANNEE
CIVIL	
COMMERCIAL	
SOCIAL	
IMMATRICUATION	
C.C.S	
C.C.O	
CORRECTIONNEL	
SIMPLE POLICE	
REFERES	

#### 5.1.e. Judgement classification

Classifying judgements gives important information since the number of cases varies from one category to another. The consultation recommends not to include every category of judgements and judicial decisions. Indeed, the purpose of the indicator remains to give information on private sector related cases.

### JUDGEMENTS AND JUDICIAL DECISIONS CLASSIFICATION

CATEGORY	SUB-CATEGORY
Civil	Litigation ("Contentieux")
Civil	Courteous/courtesy
Commercial	Litigation
Social	Litigation
Immatriculation	Litigation
President's attributions	Emergency court orders (Ordonnances de référé)
President's attributions court orders in the following matters :	divorce; elections; various court orders; citizenship certificates; small civil and commercial debts collection; wage seizure; tutor designation; inquiries, visits, cross-examination orders.
Instruction	Inquiry orders
Criminal	Minor offenses (Simple Police); misdemeanors & felony (Correctionnelle); Ordinary Criminal Court; Special Criminal Court (cattle thefts)

The consultation recommends to use the shaded categories to calculate the indicator. All other categories should be collected anyway.

### DESCRIPTION OF THE CATEGORIES THAT SHOULD BE EXCLUDED

#### COURTESY CIVIL CASES:

This category solely addresses identity issues and requests to change last names.

### **PRESIDENT'S ATTRIBUTIONS :**

Many different types of decisions are included in this category that are not addressing private sector activities. Their number remains low.

### **INSTRUCTION ORDERS :**

Although numerous, they are not judgements per se. Most of the time they consist in orders delaying the procedure, request for additional information, etc...They are directly linked to the judicial procedure. (Note : a "judge d'instruction" would be close to a D.A.)

### **DESCRIPTION OF THE CATEGORIES THAT SHOULD BE INCLUDED :**

- **CIVIL LITIGATION CASES**

- Estate litigation : illegal occupation, eviction, "acquisitive prescription"<sup>1</sup>
  - Family law (divorce, child custody, etc...)
  - Civil debts collection
  - House rental litigation

- **COMMERCIAL** : there are only litigation cases in commercial law

- Shareholders and associates disputes
  - Shipping disputes (theft of goods, defects, insurance)
  - Customs disputes
  - 100 000 millions FMG and more debt collection
  - bank debts collection
  - Bankruptcy (Chapter 11 like procedure)
  - Commercial rentals litigation

- **SOCIAL** : labor law

- Unpaid salary
  - Abusive firing
  - Unpaid firing notice period

- **IMMATRICULATION** : estate registration issues

### **CRIMINAL :**

- **SPECIAL CRIMINAL COURT (C.C.S.)** : cattle thefts exclusively.

- **ORDINARY CRIMINAL COURT (C.C.O.)** : all other crimes

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<sup>1</sup> "Acquisitive prescription" is a means of becoming owner of an estate after living continuously a certain number of years on it (among other obligations)

- **FELONY & MISDEMEANORS (CORRECTIONNEL) :**

For this category as well as for minor offenses, the 1998 direction of Inspection/MINJUS statistic tables were used to give the following description although that is not limited:

Thefts (N°1 in volume)

Assault and battery (N°2 in volume)

Deceit and fraud

Other categories are not classified :

Involuntary homicide and injures

Wandering

Family abscond

Forbidden rates money loans

Auto insurance violation

Drug violation

Driving/traffic violation

Witchcraft

Press offenses

Insult and defamation

Good behavior violation

Bounced checks

Perjury

- **MINOR OFFENSES (SIMPLE POLICE) :**

Driving/traffic violation

Labor law, hygiene and public health rules and regulation violation

Lack of identification papers

Drunkenness

Street fighting

Involuntary injuries

Refusal to obey (to a public authority)

Animal wandering (cattle)

- **EMERGENCY COURT ORDERS (RÉFÉRÉS)**

Most of the time, this emergency procedure is used either in commercial and civil cases. When asked under a short delay, the judge must respond within 48 hours. This procedure is used , for example, when perishable goods are at stake, unpaid contracts, etc....

### ***RECOMMANDATION N°5 - Judgement classification***

The collection table sent by the direction of Studies/MINJUS should be supplemented by a clear judgement classification in order to get uniform data from all the jurisdictions.

Courtesy civil cases as well as instruction orders should not be included to calculate the indicator, since they have not such a great interest regarding private sector related cases, even though they amount to a large untyped backlog.

Frontier between civil and commercial would need to be clearly set in order to get uniform data.

## 5.2. Recommendations pertaining to collected data

### *5.2.a. Refining the definition of untyped judgements*

Whether a factum exists or not, the judgement should be considered untyped.

Widening the definition to not yet signed judgements is not very interesting, since the delay between typing and signing remains short, except for a few extraordinary cases.

Another fact is important, it relates to registering the judgements. As long as the judgement remains untyped it cannot be registered in the clerk's minutes. Therefore, when a judgement is typed and filed in the clerk's minutes, an additional step is made towards the judgement being executable.

#### ***RECOMMANDATION N°6 - Refining the definition of an untyped judgement***

It should be a judgement rendered, logged in the court registry ("répertoire"), on the basis of a factum or not, but not typed yet, therefore not yet filed in the clerk's minutes.

The term "judgement" also covers judicial decisions.

Such a definition should be included in the memo sent out by the direction of Studies/MINJUS to collect data.

### *5.2.b. Counting untyped judgements*

95% of the time, untyped judgements were counted one by one by the consultation. The clerks do the same in most the cases.

However, other solutions exist to ease up the counting

#### ***RECOMMANDATION N°7 - Inscribing the typing date and using logs***

The last column on the right of the court register ("répertoire") may be used to write in the date the judgement was typed. It could be done so using a single letter ("F" for frappé in French meaning typed) or any other letter as long as it is the same everywhere.

The use of a personal log by each clerk indicating the date the judgement was typed should be widen.

Holding a log in the secretary's office of each judge in order to mention in it the date the judgement was typed and signed, would provide control and monitoring tools.

*5.2.c. The period of data collection*

As of now, the data is compiled by jurisdictions in January and transmitted that same month to the direction of Studies/MINJUS.

In order to avoid any delay, it is recommended that a memo ("circulaire") with all the information described above be sent out every year at the beginning of November by the direction of Studies/MINJUS.

***RECOMMENDATION N°8 - Direction of Studies/MINJUS annually, in November sends out a memo to all jurisdictions***

***RECOMMENDATION N°9 - Use the bimonthly tables***

Every 2 months, jurisdictions have to send filled out pre-printed tables to the direction of Inspection/MINJUS (see annex 9). An additional column could be added to the tables stating the number of untyped judgements.

Using those tables would enhance monitoring with regular information therefore allowing to thoroughly measure the impact of any event such as equipment donations, new hires, etc...

Note : These tables are pre-printed and there is already a stock of 2000 of them at the MINJUS. It would be necessary to reprint them with another column.